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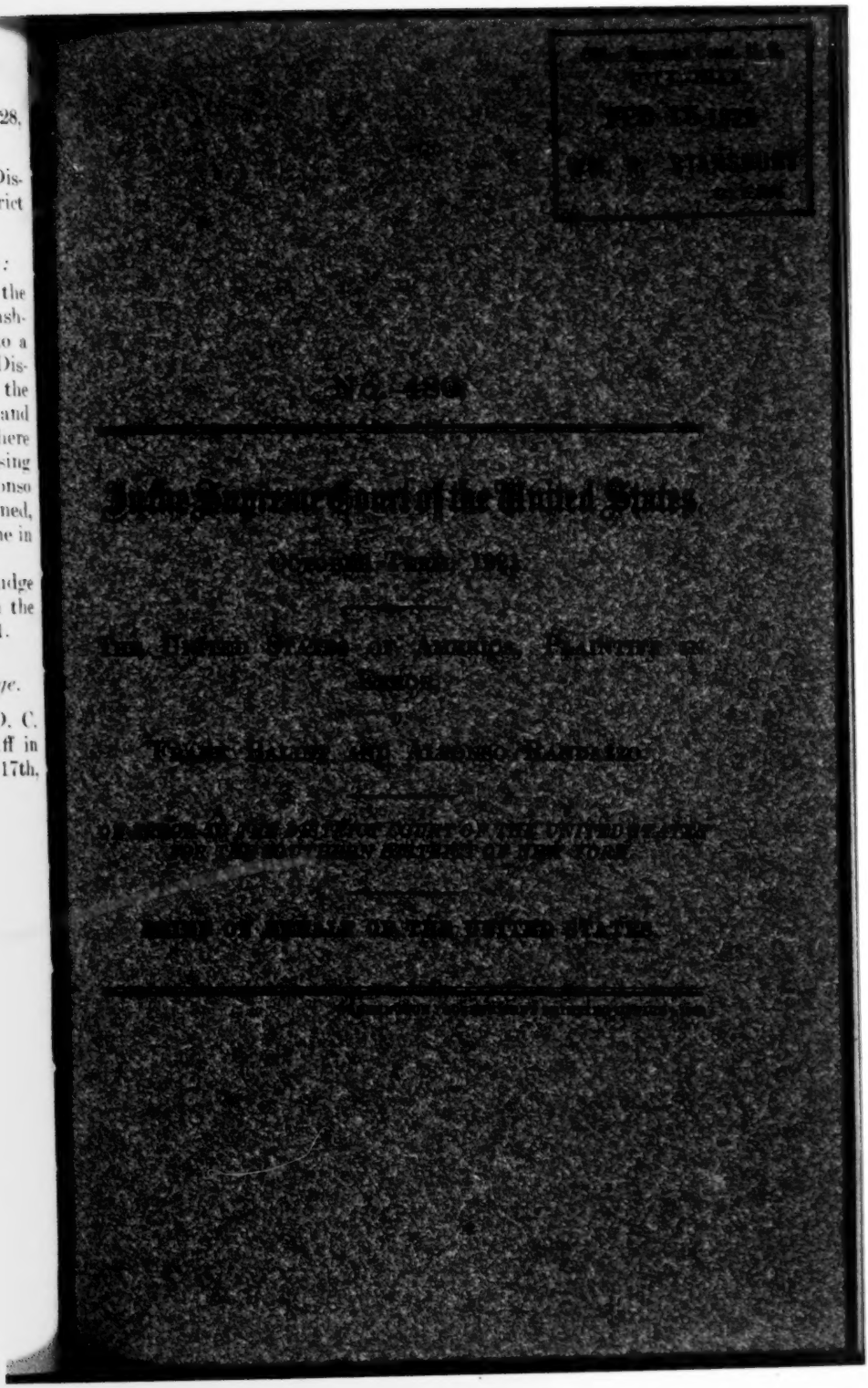

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CITATIONS.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

THE UNITED STATES OF AMERICA, plaintiff in error.
v.
FRANK BALINT AND ALFONSO RANDAZZO. } No. 480.

ON ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

The defendants in error (hereinafter called the defendants) were indicted in the United States District Court for the Southern District of New York for a violation of section 2 of the so-called Harrison Narcotic Act of December 17, 1914 c. 1, 38 Stat. 786. The indictment (R. 2, 3) alleged that the defendants did unlawfully sell, barter, and give to one Peter Reager a certain amount of a derivative of opium and a certain amount of a derivative of coca leaves not in pursuance of any written order on a form issued in blank for that purpose by the Commissioner of Internal Revenue. The defendants demurred, and the district court sustained the demurrer (R. 4, 5) on

the sole ground that the indictment did not allege a *scienter*—that is, that it failed to allege that the defendants had knowingly sold the drugs in question.

To this ruling of the district court the present writ of error was sued out by the United States under the authority of the criminal appeals act of March 2, 1907 c. 2564, 34 Stat. 1246.

The statute.

> It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible

to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(*a*) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this act.

(*b*) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this act: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

ASSIGNMENTS OF ERROR.

The five assignments of error (R. 7) complain that there was error in construing section 2 of the act of December 17, 1914, c. 1, so as to read into it the word "knowingly," which is not expressly contained therein.

ARGUMENT.

(*a*) In the very early common law the standards applied to criminal acts were wholly external, so that, e. g., a man might be held liable as for a homicide, although the act had been done by him unintentionally and in ignorance of the facts. Later, however, it undoubtedly became the established rule that, as an ordinary thing, a person could not be held guilty of a criminal offense unless he had knowledge of the facts essential to make the act a crime, or had means of knowledge which he neglected to use. The rule will be found stated, and the English authorities cited, in Mr. Stroud's *Treatise on Mens Rea*, pages 29 to 34. As an example, Lord Chief Justice Cockburn said, in *R.* v. *Sleep*, 8 Cox, 472:

> It is a principle of our law that to constitute an offense there must be a guilty mind; and that principle must be imported into the statute.

The same principle has been generally applied in this country, although the American courts have not beem so strict in its application as have the English courts. Nevertheless, in spite of this doctrine of the classical common law that knowledge of the essential facts is, as a general thing, necessary, it is now too

well settled to be disputed that the legislature may dispense with the requisite of knowledge (and has in very many cases done so), even where a written constitution prescribes the requirement of due process of law in all criminal prosecutions. (See *Shevlin-Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 67, 68.)

(*b*) It is generally said that the difference between the cases where knowledge is required and the cases where it is not is the difference between offenses *mala in se* and *mala prohibita;* but the true distinction (it is submitted) is that between offenses the effect of which upon society is limited in its nature and does not in and of itself disturb the social fabric, so that the main object of the legislature is to punish the offender, on the one hand, and those offenses, on the other hand, which are antisocial in their nature, affecting large classes of the community, and tending to weaken the social bond. For example, if a person, in cold blood, murder an infant, the offense in itself has no wide effect upon society, and the main object is to punish the offender for the crime. In such a case, therefore, it is essential that the person committing the act shall have had knowledge, or means of knowledge, of the essential facts which constituted his act a crime. On the other hand, if a person be dealing in and distributing adulterated milk, the effect of his acts is widespread and may cause death or injury to great numbers of children. In such a case the object of the legislature is to prevent these widespread effects, antisocial in their nature, and to remove the evil entirely from the

community. The object is not to punish the offender but to prevent the effects of his acts, and, therefore, in such cases, the legislature may well consider that the intent or knowledge of the defendant is immaterial, in view of the widespread evil which his acts cause, equally whether done with or without knowledge. The principles stated above seem to have been fully adopted by the courts both of this country and of England. The authorities in England are collected in Mr. Stroud's *Treatise*, referred to above, pages 39 to 50; and the authorities in this country are collected in 16 Corpus Juris, section 42, page 76. The matter is well stated by Kennedy, L. J., in *Hobbs* v. *Winchester Corporation* (1910), 2 K. B. Div. 471, 483, 484, 485:

> Taking the cases as a whole and admitting that some of them might give some ground for such an argument, I think there is a clear balance of authority that in construing a modern statute this presumption as to mens rea does not exist. I think, with great respect to my brother Channell, that he has applied to the construction of this modern statute a maxim which is recognized as applicable to offenses at common law, and it may be, as Stephen, J., suggests in *Cundy* v. *Le Cocq* (1), also to offenses under the earlier statutes which are to be treated on the same basis as offenses under the common law. To quote his words, so far as they have not been quoted—and I accept the view which Stephen, J., there states—"In old time, and as applicable to the common law or to earlier

statutes, the maxim"—that is, the maxim that in every criminal offense there must be a guilty mind—"may have been of general application; but a difference has arisen owing to the greater precision of modern statutes." * * * The clear object, the important object, so far as these sections are concerned, is, as far as possible, to protect the buyer of that which, in the opinion at all events of most people, is a necessity of human life, from buying and consuming meat that is unwholesome and unfit for the food of man; and I should say that the natural inference from the statute and its object is that the peril to the butcher from innocently selling unsound meat is deemed by the legislature to be much less than the peril to the public which would follow from the necessity in each case of proving a mens rea. * * * Speaking for myself, I am of opinion that to apply such a test of responsibility as is suggested would be on public grounds most dangerous. A man takes upon himself to offer goods to the public for their consumption with a view to making a profit by the sale of them. Those goods may be so impregnated with disease as to carry death, or at any rate serious injury to health, to anyone consuming them. To say that the difficulty of discovering the disease is a sufficient ground for enabling the seller to excuse himself on the plea that he can not be reasonably expected to have the requisite technical knowledge or to keep an analyst on his premises is simply to say that the public are to be left unprotected and must submit

> to take the risk of purchasing an article of food which may turn out to be dangerous to life or health. I think that the policy of the act is this: That if a man chooses for profit to engage in a business which involves the offering for sale of that which may be deadly or injurious to health he must take that risk, and that it is not a sufficient defense for anyone who chooses to embark on such a business to say, "I could not have discovered the disease unless I had an analyst on the premises." He has chosen to engage in that which on the face of it may be a dangerous business and he must do so at his own risk.

The same view is stated in somewhat different language by Mr. Justice Holmes, delivering the judgment of the court in *Commonwealth* v. *Smith* 166 Mass. 370, 375, 376:

> It is unnecessary under the statute to allege the defendant's knowledge of the presence of the implements or the character of the place. The statute means that people enter such places at their peril. It goes no further than other statutes which have been enforced by this court. When according to common experience a certain fact generally is accompanied by knowledge of the further elements necessary to complete what it is the final object of the law to prevent, or even short of that, when it is very desirable that people should find out whether the further elements are there, actual knowledge being a matter difficult to prove, the law may stop at the preliminary fact, and in the pursuit of its policy

> may make the preliminary fact enough to constitute a crime. It may say that, as people generally do know when they are selling intoxicating liquors, they must discover at their peril whether what they sell will intoxicate. (*Commonwealth* v. *Hallett*, 103 Mass. 452. See *Commonwealth* v. *Farren*, 9 Allen, 489; *Commonwealth* v. *Boynton*, 2 Allen, 160.) It may say that, if a man will have connection with a woman to whom he is not married, he must take the chance of her turning out to be married to some one else. (*Commonwealth* v. *Elwell*, 2 Met. 190. See *Commonwealth* v. *Murphy*, 165 Mass. 66.) In like manner it may say that people are not likely to resort to a common gaming house without knowing it, and that they must take the risk of knowing the character of the place to which they resort, if the implements of gaming are actually present.

In *Commonwealth* v. *Mixer*, 207 Mass. 141, the same rule is clearly stated by Rugg J., and on pages 142 and 143 of the opinion will be found many examples where the rule has been applied to various classes of cases of the character described above. A recent example of how far the courts of this country carry the rule dispensing with knowledge in cases of offenses of this character will be found in *People* v. *Fernow*, 286 Ill. 627, where a State statute made it an offense to have in one's possession an automobile with the manufacturer's serial number removed or erased, and it was held that knowledge upon the part of the defendant that the serial numbers had been erased was unnecessary. Even in Ohio, where

originally (*Birney's case*, 8 Ohio 230) the rule had been different (see Mr. May's article in 12 Am. Law Rev. 469), the rule is now in accord with that in the other States. (See *State* v. *Kelly*, 54 O. S. 166.)

(c) This same rule has often been applied in the Federal courts also, although no decision directly on the matter seems to have been made by this court. In *United States* v. *Leathers*, 6 Sawyer 1, 27, 28, the defendant was indicted for trading in and introducing liquor into the Indian country, and it was held to be no defense that the defendant did not know that the country where he was dealing was Indian country. In *United States* v. *Thompson*, 12 Fed. 245, the defendant was indicted for taking on board a vessel a number of passengers in excess of that permitted by law, and it was held to be no defense that he did not know that the number on board exceeded the legal limit. In *United States* v. *Mayfield*, 177 Fed. 765, 769, the defendant was indicted for misbranding an article, in that the brand did not state that the article contained cocaine, and the jury was charged that defendant's knowledge as to the existence of cocaine in the article was no defense. In *United States* v. *36 Bottles of Gin*, 210 Fed. 271, the forfeiture was asserted on the ground that the article was misbranded in stating that it was of foreign origin, when it was of domestic origin, and it was held to be no defense that the owner of the article did not know that it was of domestic origin. In *Feeley* v. *United States*, 236 Fed. 903 (C. C. A. 8th), the defendant was indicted for selling

liquor to an Indian, and it was held to be no defense that he did not know the purchaser was an Indian. The same ruling was made by the Court of Appeals for the Seventh Circuit in *Voves* v. *United States* 249 Fed. 191. In *United States* v. *Mather* 274 Fed. 225, the defendant was indicted for selling cider with an excessive alcoholic content, and it was held to be no defense that he was ignorant of the excessive amount of alcohol. It may be added that a precisely similar decision was made by the Supreme Court of Michigan in *People* v. *Hatinger* 174 Mich. 333.

(*d*) Two particular classes of cases wherein the rule dispensing with knowledge has been applied are peculiarly applicable to the case at bar. As explained by this court in *United States* v. *Jin Fuey Moy* 241 U. S. 394, 402, and in *United States* v. *Doremus* 249 U. S. 86, 94, the Harrison Narcotic Act of December 17, 1914, c. 1, has two ends—first, that of collecting revenue, and, second, that of preventing the distribution of these dangerous drugs in a manner to affect the health and morals of society. Taking up the first of these purposes, it is well settled that statutes for the purpose of protecting the revenue are frequently construed as making the knowledge of the actor irrelevant. This was laid down in England as early as 1846 in the case of *Regina* v. *Woodrow* 15 M. & W. 404, where there was an information for forfeiture under the excise laws for having in possession manufactured tobacco containing certain unlawful materials, and it was held to be no defense that the defend-

ant was ignorant of the unlawful elements in the tobacco. In this case Parke, B., said:

> It is very true that in particular instances it may produce mischief, because an innocent man may suffer from his want of care in not examining the tobacco he has received, and not taking a warranty; but the public inconvenience would be much greater if in every case the officers were obliged to prove knowledge. They would be very seldom able to do so. The legislature have made a stringent provision for the purpose of protecting the revenue, and have used very plain words. If a man is in possession of an article, as the defendant was in this case, and that article falls within the terms mentioned in the statute, there is no question but that the offence is proved.

So in *United States* v. *Malone* 9 Fed. 897, 900, where the defendant was indicted for using a still for the purpose of distilling spirits, it was held that a *scienter* need not be alleged. As we understand it, this is the well-established rule as to the construction of revenue statutes, where the statute itself does not expressly use the word "knowingly." (See *The Anna*, 1 Dall. 197, 207, 208.) The case of *Bruhn* v. *Rex* (1909), A. C. 317, was a case similar to the one at bar in its combination of a revenue and a police statute. In that case the opium ordinance of the Straits Settlements farmed the revenue on the importation of opium, and in order to protect the farmer of the revenue, as well as to prevent the importation of

opium in improper amounts, the ordinance provided that if any ship was used for the importation of opium contrary to the provisions of the ordinance, the master should be liable to a fine. A prosecution was instituted against the master of a ship which had imported opium contrary to the ordinance, and the evidence showed that the master had no knowledge of the presence of the opium on his ship and could not have obtained such knowledge by any reasonable investigation. It was held, nevertheless, by the privy council, that the master was liable, Lord Atkinson, who delivered the judgment of the court, saying:

> The other point relied upon on behalf of the appellant was that there should be proof, express or implied, of a mens rea in the accused person before he could be convicted of a criminal offense. But that depends upon the terms of the statute or ordinance creating the offense. In many cases connected with the revenue certain things are prohibited unless done by certain persons, or under certain conditions. Unless the person who does one of these things can establish that he is one of the privileged class, or that the prescribed conditions have been fulfilled, he will be adjudged guilty of the offense, though in fact he knew nothing of the prohibition. By this ordinance every person other than the opium farmer is prohibited from importing or exporting chandu. If any other person does so, he prima facie commits a crime under the provisions of the ordinance. If it be provided in the ordinance, as it is, that certain facts,

> if established, justify or excuse what is prima facie a crime, then the burden of proving those facts obviously rests on the party accused. In truth, this objection is but the objection in another form, that knowledge is a necessary element in crime, and it is answered by the same reasoning.

As to the second aspect of the Harrison Narcotic Act, viz., its purpose to prevent the distribution generally of these dangerous drugs, the authorities cited and referred to above are peculiarly applicable. No case can be conceived where the legislature is more likely to make the knowledge of the distributor immaterial than the case of the distribution of derivatives of opium and cocaine. These articles belong to the class of things which, in the language of Justice McKenna in *Hipolite Egg Company* v. *United States* 220 U. S. 45, 57, 58, "carry their own identification as contraband of law," and are "outlaws of commerce." Most extensive and intensive effects upon the character, health, and morals of the community are produced by the dissemination of these drugs in small amounts. Their sale or distribution can therefore be effected in a large way and with far-reaching effect by secret methods very difficult to detect; and, if it be held (as it has been held) that the legislature has dispensed with knowledge in the case of the traffic in adulterated food and drink, *a fortiori* the legislature will be presumed to have dispensed with such knowledge in the case of the traffic in opium and cocaine.

(*e*) The question, however, is always one of the construction of the particular statute involved, in this case the Harrison Narcotic Act of December 17, 1914, c. 1, applying, however, the general principles of law stated above as to the probable intention of the legislature.

Taking up, therefore, the Harrison Narcotic Act, it is to be observed that the legislature has not used the word "knowingly" in that portion of section 2 applicable to the case at bar. While the absence of this word is not conclusive, it, nevertheless, is highly significant, since the legislature is in the habit of using such a word in criminal statutes, and the deliberate failure to use it in any particular statute certainly indicates that the legislature did not intend that knowledge should be material in that particular case.

When other provisions of the law are examined, the same conclusion is indicated. Section 1 of the act provides that every person who deals in the drugs in any way must register and pay a tax, and then provides that—

> It shall be unlawful for any person required to register under the terms of this act to * * * sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

Considering this provision simply as a revenue measure (which it undoubtedly is), it would seem

clear that the word "knowingly" can not be read into it. The object of the provision is to compel persons who deal in the drugs to register and pay a certain tax, and the Government could not be deprived of the right to the tax on persons who dealt in the drugs merely because such persons claimed not to have knowledge that they were so dealing. The analogy of all similar revenue statutes demonstrates that knowledge is immaterial as respects a violation of this provision of section 1. The same may be said of the provision in section 4 to the effect that it shall be unlawful for any person who has not registered and paid the tax to ship the drugs in interstate commerce. This provision is authorized by the power of Congress to regulate interstate commerce, and, in analogy to such cases as *Armour Packing Company* v. *United States* 209 U. S. 56, 85, the shipment of the articles by persons not coming within the class permitted to ship would be a violation of the law, irrespective of the intent or knowledge of the shipper. Attention also may be called to the last portion of paragraph 2 of section 2 to the effect that it shall be unlawful for any person to obtain, by means of the order forms, any of the drugs for a purpose other than the distribution of them by him in the conduct of a lawful business in the drugs or in the legitimate practice of his profession. Here is a specific provision by Congress to the effect that the purpose of the person obtaining the drugs is material, and, since Congress saw fit to lay stress upon the purpose in the

latter part of section 2, it is to be presumed that it deemed the purpose or knowledge immaterial in that portion of section 2 dealing with the sale of the drugs without an order form, where all words relating to knowledge or intent are omitted.

The absence of the word "knowingly" from section 2, the necessity of construing section 1 and section 4 without reference to the knowledge of the offender, and the express provision making the purpose material in the latter part of section 2, might none of them be said to be conclusive, if there were some strong reason why the first part of section 2 should be construed to require a guilty knowledge upon the part of the offender. As, however, has been argued above, there is no strong reason for giving such a construction to the act, but, on the contrary, there is every reason for construing the act as dispensing with the necessity of knowledge. The extent and character of the evil, the secret means by which it may be caused, and the ease with which the law may be evaded, the nature of the drugs in and of themselves, and the general broad character of the police power which Congress is here attempting to enforce, as well as the stringent requisites necessarily implied from the revenue feature of the act, all lead to the conclusion that Congress would naturally provide an external standard, easily determined, and would make the subjective knowledge of the offender immaterial. Such being the case, there is no reason why the statute should be read as including words of knowledge

and intent which Congress has deliberately thought best to omit.

The judgment of the court below should be reversed.

JAMES M. BECK,
Solicitor General.
WILLIAM C. HERRON,
Attorney.

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Nos. 480, [illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

v.

FRANK BALINT AND ALFONSO RANDAZZO.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

v.

MORRIS BEHRMAN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1921

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, v. FRANK BALINT AND ALFONSO RANDAZZO.	No. 480.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, v. MORRIS BEHRMAN.	No. 582.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

Comes now the Solicitor General, on behalf of the plaintiff in error in the two above-entitled causes, and respectfully moves the court to advance said causes for argument on a date not earlier than the first Monday of February, 1922, or as soon thereafter as convenient.

These cases are criminal cases, the defendants having been indicted in both cases for violation of the Harrison Narcotic Act. Demurrers were sus-

tained to the indictments, [redacted] and these writs of error were sued out under the provisions of the Act of March 2, 1907 (c. 2564, 34 Stat. 1246).

The cases also involve a matter of general public interest, viz, in the first case whether an indictment under the Harrison Narcotic Act must include the word "knowingly," or whether, on the other hand, it is sufficient merely to allege a sale of the drugs in violation of the terms of the Act; and, in the second case, what is the meaning of the words "in the course of his professional practice only" in that portion of the Act which exempts from its provisions the dispensing or distribution of the drugs to a patient by a physician "in the course of his professional practice only."

The practical administration of the Harrison Narcotic Act is dependent, to a very large extent, upon the decision which this court may render in the two cases.

JAMES M. BECK,
Solicitor General.

December, 1921.

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UNITED STATES *v.* BALINT ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 480. Argued March 7, 1922.—Decided March 27, 1922.

1. Whether *scienter* is a necessary element of a statutory crime, though not expressed in the statute, is a question of legislative intent to be answered by a construction of the statute. P. 251.

2. Punishment for an illegal act done by one in ignorance of the facts making it illegal, is not contrary to due process of law. P. 252.

3. To constitute the offense of selling drugs contrary to § 2 of the Anti-Narcotic Act, it is not necessary that the seller be aware of their character. P. 253.

Reversed.

ERROR to an order sustaining a demurrer to and quashing an indictment.

Mr. William C. Herron, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

No appearance for defendants in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court.

This is a writ of error to the District Court under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246. Defendants in error were indicted for a violation of the Narcotic Act of December 17, 1914, c. 1, 38 Stat. 785. The indictment charged them with unlawfully selling to another a certain amount of a derivative of opium and a certain amount of a derivative of coca leaves, not in pursuance of any written order on a form issued in blank for that purpose by the Commissioner of Internal Revenue, contrary to the provisions of § 2 of the act. The defendants demurred to the indictment on the ground that it failed to charge that they had sold the inhibited drugs knowing them to be such. The statute does not make such knowledge an element of the offense. The District Court sustained the demurrer and quashed the indictment. The correctness of this ruling is the question before us.

While the general rule at common law was that the *scienter* was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definition did

not in terms include it (*Reg.* v. *Sleep*, 8 Cox C. C. 472), there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court. It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so, is an absence of due process of law. But that objection is considered and overruled in *Shevlin-Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*. *Commonwealth* v. *Mixer*, 207 Mass. 141; *Commonwealth* v. *Smith*, 166 Mass. 370; *Commonwealth* v. *Hallett*, 103 Mass. 452; *People* v. *Kibler*, 106 N. Y. 321; *State* v. *Kinkead*, 57 Conn. 173; *McCutcheon* v. *People*, 69 Ill. 601; *State* v. *Thompson*, 74 Ia. 119; *United States* v. *Leathers*, 6 Sawy. 17; *United States* v. *Thomson*, 12 Fed. 245; *United States* v. *Mayfield*, 177 Fed. 765; *United States* v. *36 Bottles of Gin*, 210 Fed. 271; *Feeley* v. *United States*, 236 Fed. 903; *Voves* v. *United States*, 249 Fed. 191. So, too, in the collection of taxes, the importance to the public of their collection leads the legislature to impose on the taxpayer the burden of finding out the facts upon which his liability to pay depends and meeting it at the peril of punishment. *Regina* v. *Woodrow*, 15 M. & W. 404; *Bruhn* v. *Rex*, [1909] A. C. 317. Again where one deals with others and his mere negligence may be dangerous to them, as in selling diseased food or poison, the

policy of the law may, in order to stimulate proper care, require the punishment of the negligent person though he be ignorant of the noxious character of what he sells. *Hobbs* v. *Winchester Corporation,* [1910] 2 K. B. 471, 483.

The question before us, therefore, is one of the construction of the statute and of inference of the intent of Congress. The Narcotic Act has been held by this court to be a taxing act with the incidental purpose of minimizing the spread of addiction to the use of poisonous and demoralizing drugs. *United States* v. *Doremus,* 249 U. S. 86, 94; *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 402.

Section 2 of the Narcotic Act, 38 Stat. 786, we give in part in the margin.[1] It is very evident from a reading of

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[1] Part of § 2 of an act entitled An Act To provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes, approved December 17, 1914, 38 Stat. 785, 786:

Sec. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

it that the emphasis of the section is in securing a close supervision of the business of dealing in these dangerous drugs by the taxing officers of the Government and that it merely uses a criminal penalty to secure recorded evidence of the disposition of such drugs as a means of taxing and restraining the traffic. Its manifest purpose is to require every person dealing in drugs to ascertain at his peril whether that which he sells comes within the inhibition of the statute, and if he sells the inhibited drug in ignorance of its character, to penalize him. Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless considerations as to the opportunity of the seller to find out the fact and the difficulty of proof of knowledge contributed to this conclusion. We think the demurrer to the indictment should have been overruled.

Judgment reversed.

MR. JUSTICE CLARKE took no part in this decision.